

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

CLERK OF DISTRICT COURT
NORTHERN DIST. OF TX
FORT WORTH DIVISION
FILED

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American Airlines, Inc.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 4:19-CV-00414-A
)	
Transport Workers Union of)	
America, AFL-CIO, International)	
Association of Machinists and)	
Aerospace Workers, and Airline)	
Mechanic and Related Employee)	
Association TWU/IAM,)	
)	
Defendants.)	

JOINT MOTION TO CORRECT THE RECORD

Defendants Transport Workers Defendants of America, AFL-CIO (“TWU”), International Association of Machinists and Aerospace Workers (“IAM”), and Airline Mechanic and Related Employee Association TWU/IAM (“Association”) (collectively, the “Defendants”) and Plaintiff American Airlines, Inc. (“American”) respectfully move this court to correct the Record for appeal pursuant to Federal Rule of Appellate Procedure 10(e). In support of this Motion, they state the following:

1. There is an inconsistency in the Record regarding exhibits 166, 168, and 172, and the parties respectfully request that the Court correct the Record regarding those exhibits.
2. On June 25, 2019, the Court held a telephone conference, during which it ruled on the parties’ objections to various proposed exhibits. ECF No. 95, Minute Order- Telephone

Conference. Counsel for both parties took notes and concluded from the conference that the objection to exhibit 166¹ was sustained and that exhibits 168² and 172³ were admitted.

3. On July 1, 2019, a permanent injunction hearing took place and the Court stated on the Record that exhibit 166 was admitted and did not include exhibits 168 and 172 as being admitted. Hearing Tr. 21:13-14; ECF No. 102, Minute Order- Courtroom Hearing.

4. However, both the June 25, 2019 evidence rulings as recalled by counsel and the Court's handwritten notes on the Court's exhibit list (ECF No. 105), show that the objections to exhibit 166 were sustained and exhibits 168 and 172 were admitted. The parties agree that the Court's exhibit list (ECF No. 105) correctly reflects the admitted exhibits and that what was stated at the July 1, 2019 Hearing is inconsistent with the Court's prior rulings (Hearing Tr. 21:13-14; ECF No. 102). The Record thus has conflicting statements regarding those exhibits.

5. The parties state that exhibit 166 was not admitted because the Court sustained the objections to it in the June 25, 2019 rulings.

6. The parties further contend that exhibits 168 and 172 are admitted as there were no objections to those exhibits.

7. On July 12, 2019, the parties communicated the discrepancy to the court reporter, who agreed that there was a discrepancy regarding exhibits 166, 168, and 172, but stated that she could only rely on what was stated on the Record. Exhibit 1, July 12, 2019 Emails.

¹ Exhibit 166 is a December 17, 2018 Eturbonews.com article titled "How American Airlines Chill the Blood of Conscientious Aircraft Mechanics."

² Exhibit 168 did not have an objection and is a summary of TWU Local 591's January 2019 Activities.

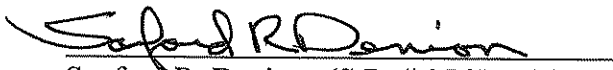
³ Exhibit 172 did not have an objection and is a February 9, 2019 bulletin from the Association.

8. On August 12, 2019, the Court issued a Final Judgment Containing Permanent Injunction (ECF No. 132) and on August 14, 2019, Defendants filed a Notice of Appeal (ECF No. 137).

9. To have an accurate record for the appeal, the parties respectfully request that the Court clarify and correct the Record to show that exhibit 166 is excluded from the Record and that exhibits 168 and 172 are included to the Record.

Dated: August 27, 2019

Respectfully Submitted,



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EXHIBIT 1

From: Debbie Saenz
To: Elizabeth A. Cuneo
Cc: Jeff Bartos; Mark Richard; Lars Berg; Osnat K. Rind; Sanford R. Denison; Judy Collins
Subject: Re: AA v. TWU: 2019.07.12 Scan of letter from E. Cuneo to D. Saenz, re_ Exs. 166-173.PDF
Date: Friday, July 12, 2019 5:37:24 PM

Counsel,

I'm not sure where we go on the exhibits. Your list matches Judge's list, but that is not what was stated in the record. I have to prepare the record based on what was said during the proceedings. The discrepancy is that Judge misstated and said 166-167 were admitted instead of 167-168. The second discrepancy is that 172 was not verbally admitted at all.

I had one error where I omitted putting 170 as admitted in the index. I wanted to correct in one swoop, but that is all that I can correct because I can't change what was said. I will be doing that on Monday when I have the clerk here who I believe can substitute what I filed.

If someone appeals, the record will not match other documents. I will leave it up to you all as to what you need to do for a clarification.

Please let me know if I can be of further assistance. I will resend and refile the corrected record on Monday with 170 added to the index.

Thanks,

Debbie

On Friday, July 12, 2019, 2:23:05 PM CDT, Elizabeth A. Cuneo <Elizabeth.Cuneo@kellyhart.com> wrote:

Ms. Saenz:

Attached please find a letter regarding Defendants' Exhibits 166-173 in the *American Airlines v. TWU, AFL-CIO, et al.* matter.

Best regards,

Elizabeth A. Cuneo

Associate



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July 12, 2019

VIA EMAIL: *debbie.saenz@yahoo.com*

Debra G. Saenz, CSR, RMR, CRR
Official Court Reporter
The Northern District of Texas, Fort Worth Division
501 W. 10th Street, Room 424
Fort Worth, TX 76102

Re: *American Airlines, Inc. v. Transport Workers Union of America, AFL-CIO, et al.*;
Cause No. 4:19-cv-00414-A

Dear Ms. Saenz:

I have conferred with counsel for Defendants in the above-referenced matter regarding Judge McBryde's rulings on Defendants' Exhibits 166–173 during the June 25, 2019 telephonic hearing on the parties' Joint Trial Exhibit List as well as the rulings reflected in the transcript from the July 1, 2019 trial. The parties concur as to the following:

- **Defendants' Exhibit 166:** Plaintiff's objections were sustained. This exhibit was not admitted.
- **Defendants' Exhibit 167:** There were no objections to this exhibit. This exhibit was admitted.
- **Defendants' Exhibit 168:** There were no objections to this exhibit. This exhibit was admitted.
- **Defendants' Exhibit 169:** Plaintiff's objections were sustained. This exhibit was not admitted.
- **Defendants' Exhibit 170:** Plaintiff's objections as to the video and the unredacted transcript were sustained. However, a redacted version of the transcript was admitted.

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- **Defendants' Exhibit 171:** Plaintiff's objections were sustained. This exhibit was not admitted.
- **Defendants' Exhibit 172:** There were no objections to this exhibit. This exhibit was admitted.
- **Defendants' Exhibit 173:** Plaintiff's objections were sustained. This exhibit was not admitted.

In light of the foregoing, we respectfully request that you include Exhibits 167, 168, 170 (in redacted form), and 172 in the official binder set of witness exhibits and the binder set provided to Judge McBryde at trial. It is our understanding these exhibits are already included in the binder sets. However, please let us know if you are missing any.

We further request that you remove Exhibits 166, 169, 171, and 173 from the official binder set of witness exhibits and the binder set provided to Judge McBryde at trial. It is our understanding that only Exhibit 166 is in the binder sets.¹ Accordingly, please allow us to retrieve that exhibit and hold it in our files.

Please let us know if we need to take any further steps with you or the Court.

Respectfully submitted,



Elizabeth A. Cuneo

Cc:

Jeff Bartos *via email*
Mark Richard *via email*
Lars Berg *via email*

¹ Per your July 10 email request and my July 11 letter of transmittal to you, the original Exhibit 166 and a copy thereof were delivered to you yesterday.